

THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

First Supplemental to Comments on The Energy Policy Act of 2005, Section 1813 Right of Way Study (“Study”)

June 14, 2006

The Confederated Tribes of the Warm Springs Reservation of Oregon (“Tribe”) is a federally recognized tribe comprised of three tribes – the Warm Springs, Wasco and Paiute Tribes occupying the Warm Springs Indian Reservation (“Reservation”) in north Central Oregon. There are approximately 3,800 tribal members, approximately 90 percent of whom reside on or near the Reservation. The reservation is comprised of 640,000 acres which is approximately 2/3 forest lands and 1/3 range land. The Tribe previously submitted comments on the Study on May 15, 2006. The following comments are supplemental to the earlier comments and are intended to provide additional information and clarification.

Fair Compensation

In its initial comments the Tribe cited several examples of successful negotiations resulting in favorable outcomes for the utility or agency requesting a right of way across the Reservation and their ratepayers. Specifically, in the 1970’s the Tribe entered into negotiations with Bonneville Power Administration (“BPA”) to construct a new right of way across the Reservation. The Tribe rejected initial offers based on traditional appraisals of their lands. The Tribe thought it was unreasonable to commit to an intrusive right of way for very little compensation. Eventually, the Tribe and BPA agreed to split the difference between the cost of a right of way across the Reservation and an alternate route around the Reservation. The Tribe received approximately \$4 million, approximately 40 times the original offer.

As indicated in the earlier comments, this development on the Reservation would not have been possible if traditional appraisal methods had been used. Rather, value was allocated to the land as a strategic location for a BPA right of way and the Tribe realized this value. In this case the valuation method embodied the principle of “substitution” in traditional appraisal methodology. The parties reviewed the cost of alternative routes around the reservation and negotiated an allocation that was acceptable to both parties.

The agreement with BPA is an example of the first alternative appraisal method the Tribe suggested in its earlier comments. The Tribe has also suggested that a wheeling charge would be an appropriate way to value the right of way, i.e. payment to the Tribe would depend on the amount of energy transmitted across the Reservation. If the payments received by the Tribe from BPA were to be analyzed using this method, the estimated payment to the Tribe would be \$0.0328 per MWhr. in 2006. The following is an illustration of how this conclusion was derived.

Under their agreement with the Tribe, BPA placed three 500 kV circuits in the North corridor right of way:

1. John Day – Marion #1, 2 – 1780 kcm ACSR;
2. Buckley – Marion #1, 3 – 1780 kcm ACSR; and
3. Ashe – Marion #2, 3 – 1780 kcm ACSR

The first line is on a 150 foot right of way and the second and third lines are installed as a double circuit on a 117.5 foot right of way. The following table shows that the nominal MVA capacity of the three lines is rated between 10,739 for August and 14,722 for extra heavy winter loads. These capacity values were obtained from the Western Electricity Coordinating Counsel (“WECC”) power flow base cases.

Conductors MVA Capacity	John Day – Marion #1	Buckley – Marion #1	Ashe – Marion #2	Total
January	3568	5343	5066	13978
Spring	3031	4547	4183	11761
August	2789	4183	3767	10739
Heavy Load	3741	5612	5369	14722

The following table shows the peak loading on the three circuits for different loading conditions in 2006 and 2010. These load estimates are based on WECC January, 2005 projections.

Conductors	John Day – Marion #1	Buckley – Marion #1	Ashe – Marion #2	Total
2006 MW Loads				
January	891	896	818	2,605
Spring	468	469	1,003	1,940
August	441	387	1,072	1,900
Heavy Load	1,038	1,274	741	3,053
2010 MW Loads				
January	1,014	988	822	2,824
Spring	598	526	946	2,070
August	557	460	999	2,016
Heavy Load	1,124	1,363	735	3,222

Based on a 0.5 load factor and the January peak load, the estimated annual energy (MWhr) flowing through the right of way in 2006 will be 11,409,900 and in 2010 will be 12,369,120. This is a representative load factor, but considered an estimate for purposes of this illustration.

From the information presented above together with the estimated annual revenue and losses to the Tribe for the right of way, an estimate of the amount per MWhr paid to the Tribe in 2006 can be derived. The estimated annual revenue to the Tribe from the initial \$4.5 million payment if converted to a perpetual stream of payments at an eight percent

interest rate would be \$360,000. The estimated annual loss of timber revenue based on payments received for the 1998 – 2002 time period would be \$14,600. Together this results in estimated annual revenue of \$374,600.

The annual revenue divided by the annual MWHr flowing through the right of way ($\$374,600/11,409,900$) equals \$0.0328 per MWHr paid to the Tribe as compensation for the right of way if the Wheeling Charge method were applied to the agreement with BPA.

Conclusion

Unlike traditional appraisals, the contract between the Tribe and BPA and the above illustration each serve as an example of a method (Substitution and Wheeling Charge) for valuing a right of way across the Reservation that results in a reasonable result for the utility or agency, minimal impact on their ratepayers and recognizes the value of the right of way as an energy corridor.